

**Marblehead Conservation Commission**  
**Minutes February 9, 2012**

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road

Meeting was called to order at 7:15 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Ken Fisher, Don Tritschler and James Emmanuel. Also present were Willy Lanphear, Conservation Administrator and Jan Smith. Brian LeClair arrived at 8:30 PM.

The hearings were conducted under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

Note: The commission currently has six members. Per the MACC Handbook, section 4.1.2, most lawyers agree that a quorum is "...a majority of commissioners currently serving". The quorum for this meeting is therefore four members.

**Approve Minutes of 01/12/2012:**

**Regular Minutes:** A motion was made and seconded to approve the minutes of 01/12/2012 as written. All voted in the affirmative.

**Executive Minutes:** A motion was made and seconded to approve the minutes of 01/12/2012 as written. All voted in the affirmative.

**Discussion Items:**

**Proposed Wedding in Steer Swamp:** Jamie Titus (83 Pleasant Street) and Liam McGeown to requested permission to hold a small wedding ceremony at The Horse Circle in the Steer Swamp conservation area. It would be Saturday September 15th 2012, about 20 guests, followed by a light breakfast on picnic tables professionally moved in by Crougers Trucking of Marblehead. Total time in the clearing would be roughly 2 hours, between 11am and 1pm.

A motion was made and seconded "to approve permission for the above wedding in Steer Swamp". All voted in the affirmative. Conditions are that no fires, smoking or alcohol are allowed and that the area be left in the condition in which it was found.

**40-1033 Gerry Island Noyes:** See below

**40-1053 151 GREEN STREET MULDOON**

Resource Area: BVW

Interests of the WPA and Bylaw: Flood Control, Protection of Wildlife Habitat and Prevention of Pollution

Control Drawing: Green Street Condominiums, dated May 3, 2011, latest revision November 21, 2011 prepared by RIM Engineering

Reference: Stormwater Management for Green Street Condominiums, prepared by RIM Engineering, dated August 16, 2011, latest revision November 21, 2011. This document includes the Pre-development to Post-development Comparison (dated November 14, 2011).  
Wetland Replication Methodology Report, dated October 10, 2011, prepared by ECR  
Construction Phasing for Land Disturbance Permit (sheets 1-6), dated ? October 13, 2011, prepared by ?  
Application for a Land Disturbance Permit for Green Street Realty Trust, dated October 11, 2011, stamped by Ralph I. Maloon, RPE, RIM Engineering Co., Inc.  
Homeowners Association Agreement (no date) included in RIM Engineering Co. letter to DEP/Gary Bogue dated November 23, 2011.

Appeared: No one

This was a continuance from 09/08/2011, 10/13/2011, 11/10/2011, 12/08/2011 and 01/12/2012. An email from P. Lynch requested a continuance to 03/08/2012 since the applicant was not prepared to discuss the peer review of the consultant, Eggelston Environmental. There still remains a question about the fee which will be resolved among W. Lanphear, W. Haug and P. Lynch (see W. Lanphear email to W. Haug, dated 11/07/2011, subject: 151 Green Street, John Muldoon, Land Disturbance Permit). A motion was made and seconded "to continue this hearing to 8 March 2012". All members voted in the affirmative.

#### **40-1061 10 CORN POINT ROAD ROCKETT**

Resource Area: Coastal Bank

Interests of the WPA and Bylaw: Flood Control, Storm Damage Prevention and Prevention of Pollution

Control Drawing: Proposed Site Plan and Sections, #10 Corn Point Road, dated January 2012, prepared by Vine Associates, Inc.

Appeared: D. Smith of Vine Associates, Inc.

Reference: Letter from the Marblehead Harbormaster, dated February 06, 2012  
Letter from the Division of Marine Fisheries, dated February 8, 2012

After review of the overall site plan/control drawing, it was agreed that the pier itself did not present a problem. The harbormaster approved the project. Smith said most of the work would be done by hand and access would be, for the most part, from a barge. However, in view of the letter from the Division of Marine Fisheries, the commission asked Smith to investigate alternative possibilities for the location of the float and the type and location of the proposed gallows. Both of these items lay within an eel grass bed. Although the plan calls for helical anchors with plastic rods to anchor the float, it is not certain such anchoring would prove feasible in this area, thus requiring concrete anchors. The commission emphasized its concern for the beds and strongly urged Smith to find alternative locations and/or means for the siting of this project. A motion was made and seconded "to continue this hearing to March 8, 2012". All members voted in the affirmative.

## **RDA 53 PHILLIPS STREET STREM / DENNIS**

Resource Area: Salt Marsh

Interests of the WPA and Bylaw: Flood Control, Storm Damage Prevention and Prevention of Pollution

Control Drawing: As supplied with the NOI

Appeared: S. Martin of Martin Landscaping and Ms. Strem

Martin said the open surface of the current driveway will be removed and replaced with a system of Unilock pavers, underlaid with proper sand and aggregate. This construction will allow a greater amount of infiltration of water into the ground. This will, in turn, help to alleviate run-off into the street and, subsequently, into the marsh. All members voted to close this hearing. A motion was made and seconded "to issue a negative determination with the condition that proper sediment control be in place during the construction". All members voted in the affirmative.

## **40-1062 LAFAYETTE STREET NATIONAL GRID**

Resource Area: River Front

Interests of the WPA and Bylaw: Flood Control, Storm Damage Prevention, Protection of Wildlife Habitat and Prevention of Pollution

Control Drawing: As supplied with the NOI

Appeared: M. Toohill of Coneco (contractor for National Grid)

After discussion, it was realized most of the proposed work is in Salem. All digging will be in the street, each section of the trench will be dug out and closed in on the same day. Proper sediment control measures will be in place at all times. All members voted to close this hearing. A motion was made and seconded "to issue an OOC with the following special condition, viz., that proper sediment control measures will be in place at all times". All members voted in the affirmative.

## **40-???? 29 CLIFTON HEIGHTS LANE**

Resource Area: Coastal Bank

Interests of the WPA and Bylaw: Flood Control, Storm Damage Prevention and Prevention of Pollution

Control Drawing: As supplied with the NOI

Reference: Letter from Patrowicz Land Development Engineering, dated January 25, 2012, #29 Clifton Heights Lane

Appeared: D. Winer, owner, and S. Patrowicz of Patrowicz Land Development Engineering

Since this project has not received a DEP File No., it will be discussed but cannot be closed. This project is the repair of an existing deck (same footprint, no expansion) and the repair of portions of the stone patio/terrace. A motion was made and seconded "to continue this hearing to March 8, 2012". All members voted in the affirmative. In the event an OOC is issued, it will contain the following special conditions.

**Pre-construction:**

28. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

29. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

30. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor.

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

**During construction:**

32. This project shall not cause an increase in run-off onto adjacent properties or streets, either during construction or after completion. Appropriate measures shall be taken to prevent the movement of silt or debris onto adjacent properties or streets.

33. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).

35. All demolition debris will be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

36. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

38. Any pressure-treated wood proposed to be used in the construction of a structure for land - based use shall be arsenic-free. Any pressure-treated wood proposed to be used in the construction of a structure for salt water contact shall be treated with Chromated Copper Arsenate (CCA) or other preservative approved by the EPA and/or the MADEP which is less polluting and harmful to the salt water and its environment.

**Post-construction/in perpetuity:**

40. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To

mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawn care published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

41. Maintenance pointing of existing stone masonry walls and patio surfaces including the replacement of occasional, missing stones in the wall or on the patio is allowed as a surviving condition to the Order of Conditions. All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. The future razing, any rebuilding of entire wall or patio sections or enlarging of the subject wall(s)/patio(s) will require the filing of a new Notice of Intent. This condition shall survive this order.

50. If the control drawings for this project were prepared and stamped by a licensed Professional Engineer, licensed Professional Land Surveyor, licensed Professional Architect or licensed Professional Landscape Architect, the construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawings. Upon completion of the work authorized by this OOC, said licensed professional shall submit a written statement to the Conservation Commission certifying that the completed work is in substantial compliance with the control drawings and setting forth any deviations that may exist between the completed work and the plans approved the Conservation Commission.

51. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. See Attachment "C" for "Schedule of Fines".

B. LeClair joined the commission at this juncture.

**OOC 40-049** Another matter regarding this site dealt with violations committed under OOC 40-049. Research documented that the work had been started without filing for a permit; the OOC, when issued, was not recorded and no COC was requested or subsequently recorded. Following the Marblehead Con Com fine guidelines, for any administrative violation committed before 1 January 2010, there will be a simple fine for each violation applied for one day only and not for multiple days as allowed under the regulations. A motion was made and seconded "to levy a fine of \$300.00 for the OOC violation (1st) and \$600.00 for the COC violation (2nd)". Five members voted in the affirmative, F. Sullivan voted "no".

#### **40-???? 32 FOSTER STREET**

Resource Area: Coastal Bank

Interests of the WPA and Bylaw: Flood Control, Storm Damage Prevention and Prevention of Pollution

Control Drawing: 32 Foster Street, Landscape Plan, dated 02/01/2012, prepared by Keith LeBlanc Landscape Architecture, Inc.

Reference: Letter from Patrowicz Land Development Engineering, dated January 25, 2012, #32 Foster Street

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

Since this project has not received a DEP File No., it will be discussed but cannot be closed.

This project is the repair of an existing timber seawall. This seawall will be replaced with a masonry stone wall of the same length and height. In addition, repairs will be made to another section of an existing masonry stone seawall. A revised control drawing will be issued to reflect the repairs on the existing masonry stone seawall. This revised drawing will also show a minimum three (3) inch depression of the lawn surface vs. the top of wall height along the entire length of seawall (new and existing). A motion was made and seconded "to continue this hearing to March 8, 2012". All members voted in the affirmative. In the event an OOC is issued, it will contain the following special conditions.

**Pre-construction:**

28. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

29. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

30. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor.

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

**During construction:**

32. This project shall not cause an increase in run-off onto adjacent properties or streets, either during construction or after completion. Appropriate measures shall be taken to prevent the movement of silt or debris onto adjacent properties or streets.

33. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).

35. All demolition debris will be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

36. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

permitted provided they meet the aforementioned guidelines.

**Post-construction/in perpetuity:**

40. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawn care published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

41. Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order.

47. Invasive plants shall not be used nor maintained in the landscape of the project site. This applies to the existing landscape as well as to any proposed landscape. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit [www.mnla.com](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org).

50. If the control drawings for this project were prepared and stamped by a licensed Professional Engineer, licensed Professional Land Surveyor, licensed Professional Architect or licensed Professional Landscape Architect, the construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawings. Upon completion of the work authorized by this OOC, said licensed professional shall submit a written statement to the Conservation Commission certifying that the completed work is in substantial compliance with the control drawings and setting forth any deviations that may exist between the completed work and the plans approved the Conservation Commission.

51. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. See Attachment "C" for "Schedule of Fines".

## **40-???? 212 HUMPHREY STREET**

Resource Area: Land Under Water

Interests of the WPA and Bylaw: Flood Control, Protection of Wildlife Habitat and Prevention of Pollution

Control Drawing: Site Plan, Construction of new Grainage Improvements, 212 Humphrey Street, dated January 31, 2012, prepared by Patrowicz Land Development

Reference: Letter from Patrowicz Land Development Engineering, dated January 31, 2012, Town of Marblehead Memo, dated 02/09/2012, re timeline of violations on this site.

Appeared: S. Patrowicz of Patrowicz Land Development Engineering, W. Mirrione of Marcus, Errico, Emmer & Brookds, PC and M. Gager and M. DeMaria of Crowninshield Management

Since this project has not received a DEP File No., it will be discussed but cannot be closed. After discussion, it was agreed to resolve the drainage issue off the entire parking lot by connecting all drains coming off the parking lot and feeding them into a single deep sump hooded catch basin followed by a properly sized Stormceptor (or equivalent). This outflow will empty onto an existing concrete sluiceway. At the bottom of this sluiceway, the applicant will install a series of boulders (ala rip rap) to slow down and diffuse the water flow/velocity before it enters the wetland. Since the roof is asphalt shingle and this drainage is considered "treated", no roof drains will be attached to the afore described drainage system. Finally, a landscape plan for the wetland bank will be submitted. A motion was made and seconded "to continue this hearing to March 8, 2012". All members voted in the affirmative. No special conditions were delineated at this time. The matter of fines due to previous violations will be discussed at the March meeting. B. LeClair recused himself from any discussions re fines in this matter. The chair will compose a letter to the applicant explaining the fine schedule and defining the timeline of the violations, enclosing same with the letter.

### **Old/New Business:**

**Enforcement Order:** 212 Humphrey Street (210-218): Fines dealing with these violations will be discussed on March 8, 2012.

### **Requests for COC:**

**40-924** 1 Stone Terrace Lyons: A motion was made and seconded "to issue a COC". All members voted in the affirmative.

**40-653, 40-838:** 22 Harbor Avenue: Due to new ownership, A motion was made and seconded "to issue a COC" without fine. All members voted in the affirmative.

**40-006, 40-425, 40-504, 40-560, 40-588** 201 Ocean Avenue: Due to new ownership, A motion was made and seconded "to issue a COC" without fine. All members voted in the affirmative.

**40-910** 201 Ocean Avenue: Due to a violation by the current ownership, a motion was made and seconded "to issue a COC with a fine of \$300.00". All members voted in the affirmative.



**Sign Documents:** All documents per the agenda were signed.

**Other Matters:**

**Fines:** On 01/13/2011 the commission approved the initial fine guidelines. On 01/12/2012 the commission approved an addition to these guidelines. A revision of these 01/12/2012 guidelines was subsequently submitted to the commission by the chair. The reason for this revision was that any alteration of a wetland directly in a wetland, not via a buffer zone, (per the 01/13/2011 guidelines) carries an automatic fine of \$300.00 per day from the date of an E.O. until the conditions of the E.O. are met. Therefore, the reference to a violation directly in a wetland (not via a buffer zone) in the 01/13/2012 guidelines was a mistake. The revised 01/13/2012 guidelines deletes any reference to violations directly in a wetland and refers only to violations in a buffer zone which might or might not alter a wetland. The chair asked the members to please reflect on these fine guidelines and be prepared to accept or offer changes at the March meeting.

**40-1033 Gerry Island Noyes:** The commission voted to levy the maximum fine on the E.O. dated 06/30/2011. For a period of 40 days [from 06/30/2011 to 08/09/2011 (the date the goats were removed from the island)], at \$300.00 per day, this amounts to \$12,000.00. The main violation was destruction of the coastal banks via the traffic of the goats on these resource areas and destruction of vegetation was the next most serious violation. The chair will discuss this matter with Town Counsel, Lisa Mead.

The meeting adjourned at 10:15 PM.